



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Release Number: 201517019

Release Date: 4/24/2015

UIL Code: 501.33-00

Date: 1/26/2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Dear _____ :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (the Code). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

Because you don't qualify as a tax-exempt organization under Section 501(c)(3) of the Code, donors can't deduct contributions to you under Section 170 of the Code. You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

We'll also notify the appropriate state officials of our determination by sending them a copy of this final letter and the proposed determination letter (under Section 6104(c) of the Code). You should contact your state officials if you have questions about how this determination will affect your state responsibilities and requirements.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

Sincerely,

Director, Exempt Organizations

Enclosures:

Notice 437

Redacted Letter 4036, *Proposed Adverse Determination Under IRC Section 501(c)(3)*

Redacted Letter 4038, *Final Adverse Determination Under IRC Section 501(c)(3) - No Protest*



**DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224**

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: November 26, 2014

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

N=State

P=Date

R=For Profit Business

x dollars= Dollar Amount

UIL:

501.32-00

501.32-01

Dear

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(3) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

Issues

Do you qualify for exemption under section 501(c)(3) of the Code? No, for reasons stated below.

Facts

You were previously granted exemption under Section 501(c)(3) of the Code. Your exemption was revoked due to the non-filing of Form 990 for three consecutive years. You submitted an application for exemption for retroactive reinstatement.

Letter 4036 (Rev. 7-2014)
Catalog Number 47630W

You were incorporated as a nonprofit corporation on P in the state of N. The Articles state the purposes for which you were formed are exclusively charitable, scientific, or educational and consist of the following:

1. To perform for pleasure, recreation and competition;
2. To aid, support, and assist by gifts, contributions, or otherwise other corporations, community chests, funds and foundations, organized and operated exclusively for charitable, scientific, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder, or individual and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation;
3. To do any and all lawful activities which may be necessary, useful or desirable for the furtherance, accomplishment, fostering or attainment of the foregoing purposes, either directly or indirectly and either alone or in cooperation with others, whether such others be persons or organizations of any kind or nature such as corporations, associations, trusts, institutions, foundations or governmental bureaus, departments or agencies.

Your mission is to support, encourage and educate team members of all ages emotionally, physically, and financially in the arts.

Your incorporator and president is the owner of R, a for profit dance studio that you use as a team. Your bylaws state:

- You shall have a special contract with R for instruction, rehearsal, and performance requirements;
- Your directors shall be from R.

Advertising for you also comes through R as well as the multiple community performances which you do. Furthermore, you stated if a dancer is interested in you they usually start their path by taking classes with R who may obtain new students based on your relationship with R.

You are also a membership organization; your bylaws indicate:

- Your members are defined as performing dancers and their parents or their guardians;
- Any member over the age of 18 years is eligible to hold any office;
- Your members must sign an agreement supporting your mission and rules for each dance season;
- Your performing members are selected through an audition process as set forth by your president and your directors;
- Each troupe family shall have one vote per dancer.

Each year, you have auditions for the upcoming dance season; each participant is required to learn a small dance combination that they perform in small groups in front of a panel of judges; each dancer is also asked to complete a series of dance technique movements. Each dancer is scored; the panel chooses from these scores where each dancer will be placed; each dancer has an opportunity to be on a team based on level of ability. Once a dancer is assigned to a team, the dancer is required to take a certain number of dance classes usually at R, participate in scheduled rehearsals and performances, attend specific conventions/competitions and assist in a number of fundraising events.

You also organize fundraisers to support your activities such as travel, entry fees, costumes, props etc. Examples of fundraisers include a Silent Auction, 50/50 raffle, apple and candy bar sales, cookie sales, flower gift cards and a Christmas tree auction.

Section 9.6 of your bylaws indicates your participants may fundraise for their individual accounts and states "All fundraisers will be designed as a General or Individual fundraiser prior to starting. All fundraising activities must have approval of the Board of Directors and a request form submitted. All funds in individual accounts must be used for activities related to performance education, workshops, costumes, and competition. They cannot be used for personal purposes or regular tuition to a dance studio. Individual account funds are paid directly to the use and not to the individual member. If a troupe member leaves the troupe in midseason or after try-outs, and decides not to participate, all funds in the troupe member's individual account will be moved to the General Fund, unless the troupe member gives the treasurer notice within 30 days to use the funds for an acceptable use (as listed above). After 30 days, the funds are no longer available to the troupe member."

Article 12.1 of your bylaws states:

- No member of the organization shall have any right title or interest in any property or assets of the organization prior to or at the time of any liquidation or dissolution of the organization.
- If any member of the organization forfeits their membership or is asked to leave, their assets shall go into the general fund.
- Withdrawal of all dancers from the Troupe in a team family constitutes automatic resignation of membership and forfeiture of all funds in the member's individual account. If a team family has more than one dancer in the Troupe and one or more of those dancers remain in the Troupe, the member will only lose the voting privilege for the withdrawn dancer but will retain all voting rights for the remaining dancer(s). All funds from a withdrawn dancer's account will be transferred to a remaining family member's dancer account.

Members may formally submit fundraising ideas on a Fundraiser Proposal Form to be approved by your board and then submitted to the general membership for approval.

The form requires the name of the proposed fundraiser and description, a proposed time frame to run and proposed type (Individual or General or No preference), the profit margin to you or the individual as well as are any costs needed fronting from the general fund and if so a detailed description of such costs.

Your gross revenue has averaged about x dollars for the past several years; about 5% of your revenue is from membership fees while the remainder is from fundraising events and competition and convention entries. Expenses are primarily for competitions and convention entries, and fundraising. You wrote most if not all production companies who put on competition and conventions you attend do not accept personal checks. As such, all funds must run through you. You collect each dancer's fees for the convention and pertinent competition fees and immediately disburse those fees in one check to the production company.

Furthermore, you have performed at local events as well as festivals, fairs, parades, and at schools and senior centers. Your members also participate and compete in dance competitions and attend conventions to enhance their skills and learn team work. You offer additional training opportunities to team members by sponsoring workshops and hosting guest choreographers. Finally, you mentor youth in dance by having team members offer classes and host activities and you have sponsored low income youth for conventions by paying fees.

Law

Section 501(c)(3) of the Internal Revenue Code exempts from federal income tax corporations, and any community chest, fund, or foundation, organized and operated exclusively for, charitable, scientific, or testing for public safety, among other purposes. It expressly forbids the inurement of net earnings to the benefit of a private shareholder or individual.

Section 1.501(a)-1(c) of the Regulations provides that the terms "private shareholder or individual" in Section 501 refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(a)(1) of the Regulations provides that, in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified

in Section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the Regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Section 1.501(a)-1(c) of the regulations defines the words "private shareholder or individual" in Section 501 of the Code to refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides that an exempt organization must serve a public rather than a private interest.

Revenue Ruling 69-175, 1969-1 C.B. 149 describes an organization formed by parents of pupils attending a private school, in order to provide school bus transportation for its members' children. It was determined that this organization serves a private rather than a public interest and does not qualify for exemption under section 501(c)(3) of the Code.

In International Postgraduate Medical Foundation v. Commissioner, TCM 1989-36, the Tax Court concluded that when a for-profit organization benefits substantially from the manner in which the activities of a related non-profit organization were carried on, the latter organization was not operated exclusively for exempt purposes within the meaning of section 501(c)(3), even if it furthers other exempt purposes.

In Better Business Bureau v. United States, 326 U.S. 279 (1945), the Supreme Court stated that the presence of a single nonexempt purpose, if substantial in nature, will preclude exemption under section 501(c)(3) of the Code, regardless of the number or importance of statutorily exempt purposes. Thus, the operational test standard prohibiting a substantial non-exempt purpose is broad enough to include inurement, private benefit, and operations that further nonprofit goals outside of the scope of section 501(c)(3).

In Old Dominion Box Co. v. United States, 477 F.2d 344 (4th Cir. 1973) cert. Denied 413 U.S. 910 (1973) the court held that operating for the benefit of private parties constitutes a substantial non-exempt purpose.

Application of Law

You are not as described in Section 501(c)(3) of the Code and Section 501(c)(3)-1(a)(1) of the Regulations because you do not satisfy the operational requirements of the Code and Regulations. You are not operated exclusively for exempt purposes due to net earnings inuring in whole or in part to your president through R. Further, your members receive more than an insubstantial private benefit.

You are not described in Section 1.501(c)(3)-1(c)(1) of the Regulations because more than an insubstantial part of your activities are devoted to non-exempt private purposes; you are providing a funding mechanism for individual members in an effort to fund the substantial costs associated with dance such as education, workshops, costumes, and competition. The private benefit conferred on members who participate in the individual fundraisers is intentional which substantiates you are operating for a substantial nonexempt private purpose.

You are not described in Section 1.501(c)(3)-1(c)(2) of the Regulations because your net earnings inure to the benefit of private shareholders or individuals as defined in Section 1.501(a)-1(c). For example, because the owner of R, the dance studio you use, maintains a position of control in you as your president, she is considered an insider. Your bylaws also indicate your directors shall be from R and that you shall have a special relationship with R. These factors illustrate that your net earnings are inuring to your president because your president is using you to further the interests of R.

In addition, because your members exert either direct or indirect control over you, they are considered insiders within the meaning of 501(c)(3). Your net earnings inure to specific member insiders, who choose to participate in the individual fundraisers because this relieves them of the economic burden of paying for dance training and competitions.

You are not as defined in Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations, because you are operating for the private interests of R which is your president's for-profit business. For example, you stated if dancers are interested in you they usually start their path by taking classes with R as well as continue dance lessons from R once they become a troupe member. Advertising for you also is through R. Because of your relationship with R, R is in an advantageous position to benefit from your activities. You are also operating for the private interests of your members, who participate in the individual fundraisers because they are able to keep their expenses at a minimum.

You are similar to the organization described in Rev. Rul. 69-175, 1969-1 C.B. 149; you are controlled by your members who provide themselves a means through you to fulfill their individual responsibility of paying for items associated with dance. Therefore, you are serving a more than insubstantial private rather than public interest which bars you from exemption under Section 501(c)(3).

You are similar to the organization described in International Postgraduate Medical Foundation (IPMF). Your founder is in a position of control and owns a for-profit company which benefits substantially from the manner in which your activities are conducted. Like IMPF, you are not operated exclusively for exempt purposes within the meaning of section 501(c)(3), even if you further other exempt purposes.

Like Old Dominion Box Co., you afford private benefit to your founder, her for profit business, R, and your members. This is a substantial non-exempt purpose. As held in Better Business Bureau v. United States, you are therefore precluded from exemption under section 501(c)(3) of the Code, regardless of the number or importance of statutorily exempt purposes.

Applicant's Position

You state you have no current plan to change your fundraising activities due to the availability of fundraising for all members. Fundraising events/activities are open to all members for individual accounts. Individual accounts are to be used by each dancer and can only be used for dance related items as indicated in your bylaws.

Service's Response to Applicant's Position

You failed to provide any additional information from which it can be concluded that you are operating exclusively for 501(c)(3) purposes. Your net earnings are inuring to insiders as described in the preceding facts and analysis and you are serving substantial private interests rather than public interests. This precludes exemption under Section 501(c)(3).

Conclusion

Based on the facts and information submitted, you are not organized and operated exclusively for exempt purposes; your net earnings inure to your founder and for the benefit of your members; you are operating for the private interests of R and your members as well.

Accordingly, you do not qualify for exemption under section 501(c)(3) of the Code and you must file federal income tax returns. Contributions to you are not deductible under section 170 of the Code.

If you don't agree

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send a statement to us within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with

- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

Under penalties of perjury, I declare that I examined this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

For authorized representatives:

Under penalties of perjury, I declare that I prepared this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, *Power of Attorney and Declaration of Representative*, with us if he or she hasn't already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*.

We'll review your protest statement and decide if you provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

Where to send your protest

Please send your protest statement, Form 2848, if needed, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You can also fax your statement and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that he or she received it.

If you agree

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

You can find all forms and publications mentioned in this letter on our website at www.irs.gov/formspubs. If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Director, Exempt Organizations

Enclosure:
Publication 892